



**Council**  
**23 July 2014**  
**Fitness to Practise Report**

<b>Classification</b>	Public
<b>Purpose</b>	For noting
<b>Issue</b>	Quarterly update to Council on the work of the Regulation department and the GOSc's fitness to practise committees.
<b>Recommendation</b>	To note the report.
<b>Financial and resourcing implications</b>	FTP costs are currently within budget but it is likely that by the end of the year the budget will be exceeded. Costs will continue to be monitored closely by the Regulation and Registration and Resources Departments.
<b>Equality and diversity implications</b>	Ongoing monitoring of equality and diversity trends will form part of the Regulation department's future quality assurance framework.
<b>Communications implications</b>	None
<b>Annexes</b>	A. Dashboard Report B. Moulton Hall Report
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### **Fitness to practise case trends**

1. In this reporting period, the Regulation department received 15 formal complaints and 28 informal complaints. During the same period last year, the figures were 12 formal complaints and 28 informal complaints.
2. Of the 15 formal complaints, five involved a failure to uphold the reputation of the profession by conduct (teaching osteopathic techniques). A further five related to commercial disputes between osteopaths. The remaining complaints related to: failure to establish and maintain sexual boundaries; failure to respect a patient' dignity and modesty; failure to have insurance; failure to act with integrity; and failure to report a colleague's inappropriate behaviour.
3. Of the 28 informal complaints, seven related to commercial disputes between osteopaths and/or failing to act with integrity, six involved failing to uphold the reputation of the profession and a further six related to provision of treatment. The remaining complaints concerned allegations about the health of registrants, failure to establish and maintain sexual boundaries, failure to have insurance and failure to declare criminal matters.
4. In this reporting period, three applications were made for the imposition of an Interim Suspension Order. Two of these related to the registrant's health and the third involved allegations that a registrant had breached professional boundaries.
5. The Regulation Department is currently handling a caseload of 93 fitness to practice cases (42 formal and 51 informal).

### **Section 32 cases**

6. Under section 32 of the Osteopaths Act 1993, it is a criminal offence for anyone who is not on the GOSc's register to describe themselves (either expressly or by implication) as an osteopath.
7. In the current reporting period, the GOSc successfully prosecuted one person at Westminster Magistrates Court for unlawfully using the restricted osteopathic title. The Defendant was fined £500 and ordered to pay costs of £1,917.40 to the GOSc along with a Witness Tax of £50.
8. Criminal proceedings in a second case were due to commence on 17 June 2014, but were postponed because of the non- availability of defence witnesses.
9. The GOSc has now recouped the full costs associated with the section 32 proceedings that it undertook in Scotland in 2011. The sum of £18,880 has now been received from the Defendant's solicitors.
10. The Regulation department has also continued to act on other reports of possible breaches of section 32.

11. The Regulation department is currently handling 55 active section 32 cases. Cease and desist letters have been sent in 10 cases during this quarter, two matters have been resolved, and investigations remain ongoing in the remaining cases.
12. At its meeting in May 2014, Council approved a draft Protection of Title Enforcement Policy for consultation. The consultation commenced in June and is currently on-going. An analysis of the consultation will be provided to Council in due course.

### **Dashboard reporting**

13. Following discussion at Council in October, it was agreed that a dashboard format would be introduced using the indicators of efficiency, effectiveness and economy, and including comparative trends over time.
14. The dashboard report is attached at Annex A. Comparative data from the same quarter last year has been included (the figures are bracketed and highlighted in red).
15. The median figures for length of time taken to screen cases, and for cases to be considered by the Investigating Committee and Professional and Conduct Committees is within KPI.
16. In December last year, we recruited an additional legally qualified caseworker on a six month basis to assist with the caseload, and to ensure cases continue to be progressed in accordance with our performance indicators. This contract has been extended until September 2014.
17. During the reporting period, the Investigating Committee adjourned two cases in order to obtain further information. In one case, the registrant had not provided the information requested by the GOsC, and the Committee considered that the registrant should be invited to provide the documents again and reminded of the duty to co-operate under the code. The second case related to an osteopath practicing osteopathy on animals, and the Committee requested further information to assist its consideration of the issues in this case.
18. In relation to whether cases before the PCC have been properly brought, in this reporting period, there was one successful 'half time submission' under rule 27(6) of the PCC Rules. Under rule 27(6), after the close of the Council's case, a registrant may submit that any facts adduced or admitted are insufficient to support a finding of unacceptable professional conduct ("UPC").
19. During this reporting period, two applications for permission judicial review were received. One related to the decision to impose an interim suspension order in a health case. Permission for judicial review in this case was refused.

20. The remaining application relates to an interlocutory decision by the PCC in a case that is currently on-going.
21. During this reporting quarter, there was a complaint from a defence witness alleging that her details had been provided to the complainant by the GOsC. The complaint was investigated by the CEO who reviewed the case file and documentation. The complaint was not upheld.

### **Costs considerations**

22. The Regulation Department is having to accommodate an increasing number of hearing days.
23. The increase in hearings relates in part to a growing number of health cases. The fixed costs of health cases are more expensive than conduct cases, because they require the attendance of a medical assessor as well as a legal assessor at the hearing. The GOsC is required to commission and pay for medical testing, and the production of a medical report. The GOsC expert has to attend the hearing to hear the evidence and to be available for cross examination.
24. In health cases, our present rules require both a preliminary hearing before the Committee, and a substantive hearing to determine whether or not the registrant is fit to practise.
25. In addition, the nature of health cases is such that review hearings will often be required to assess compliance with conditions.
26. The PCC has also imposed Conditions of Practice Orders in three cases recently, which will require review hearings this financial year. Applications to the Committee for a witness summons are also occasionally required and this is difficult to predict at the start of a case.
27. Owing to exceptional circumstances, the venue for one hearing will have to be in Manchester. The holding of the hearing in an external venue and the requirement to transport and accommodate staff will have a significant impact on the cost of the proceedings as a whole.
28. Under our current rules, Interim Suspension Order applications also effectively require two hearings-one before the Investigating Committee (which can only impose an interim order for a maximum of two months), and then if the case is referred by the Investigating Committee for a hearing- a new application has to be made to the Professional Conduct or Health Committee.
29. In addition to the costs of hearings, the Regulation Department has incurred costs relating to training of new members of the Investigating Committee and Council members sitting as an appeal tribunal. Additional training costs will be incurred following the exercise to recruit new Legal Assessors.

## **Judicial review proceedings**

30. As noted above, in this reporting period, the GOsC has been served with two applications for permission to judicially review the decisions made by its Fitness to Practise Committees.
31. Permission has been refused in one case. However, no decision has yet been made by the High Court in the second case.
32. The application in the second case was made whilst the proceedings before the PCC were still on-going. The GOsC has had to incur external legal costs to defend the claim for judicial review, and will additionally have to bear the costs of the resumed hearing regardless of the outcome of the claim.
30. The Regulation and Registration and Resources Departments are continuing to monitor the effect of these increases in hearing costs and related matters.

## **Legal services tender**

33. In November 2012, the Finance and General Purposes Committee agreed that the Executive should undertake a twelve month market testing exercise with a number of legal service providers before determining whether or not to commit to a long term relationship with any of the providers.
34. The market test exercise commenced in January 2013, and the Regulation Department has been working with two firms of solicitors, a solicitor advocate and two barristers as part of the exercise.
35. A meeting was held with all service providers on 12 September 2013. One of the main purposes of the day was to ensure that new providers of legal services had an understanding of the osteopathy profession and the GOsC. The tenderers were therefore given a presentation from an osteopath who acts as an expert for the GOsC and were able to ask technical questions to assist their case preparation. In addition, the opportunity was taken to share knowledge and best practice and to clarify the GOsC's expectations of its legal providers.
36. Given the relatively small number of cases which are heard by the PCC each year, Council agreed at its January 2014 meeting, that the market testing exercise should be extended for a further six months in order to allow a fair opportunity for each of the legal service providers to be evaluated. Council agreed, that in line with the objective of maximising quality, however, the Executive may choose to engage additional legal service providers if it considers that a particular case warrants particular expertise, or if any of the current providers are not available to undertake the work.

37. Each of the legal service providers has been assessed against a number of evaluation criteria including:
- a. cost
  - b. responsiveness (including availability to undertake GOsC work)
  - c. judgment
  - d. quality of work
  - e. drafting
  - f. advocacy
  - g. added value (e.g. training/case updates).
38. In addition, feedback on individual case presenters was obtained from all PCC members at the PCC members' day on 15 November 2013 and from all IC members at the IC training day on 21 May 2014.
39. It is fair to say that the different service providers have different strengths and weaknesses. Good advocates are invariably in high demand and not always available to undertake GOsC casework. The skills and resources required for investigative casework are different to the advocacy services required at a hearing, for example.
40. The view of the Executive is that the GOsC would not be best served by appointing a single provider of legal services.
41. The Executive proposes to invite the current providers to enter into a one year framework agreement with the GOsC, with the option to renew for a further year.
42. The framework agreement would set out standard terms and conditions which would apply to any GOsC work being handled by that provider. However, the framework agreement would provide no guarantee of any, or any minimum instructions, and would expressly reserve the right of the GOsC to instruct alternative providers.

### **Monitoring of 'Rule 8 Procedure'**

43. On 7 April 2014, the Professional Conduct Committee considered the first application to consider a case using the "Rule 8 procedure" agreed by Council last year.
44. A verbal update on the process was provided to Council at its meeting in May.

## Quality assurance of fitness to practise

### *Case preparation*

45. In July 2013, the Regulation Department introduced new template case history, case management and risk assessment forms; chronologies and evidence grids as part of effective case management. Each case must have these documents on file and they are regularly reviewed as part of case management meetings.
46. In September 2013, the OPC considered draft proposals for a quality assurance framework and received an update in February 2014, which included comments on the framework that had been received from the Chair of the PCC. The Regulation Department has now produced a working draft of the quality assurance manual and template library, which are key elements of the quality framework. The intention is to map each part of the FTP process against the PSA performance and audit standards, and to identify areas where processes could be made more effective.

### *Peer review processes*

47. As part of on-going quality work, the Regulation and Professional Standards teams have established a peer review mechanism to assess compliance with case management and customer service standards. Council received a report on the results of the first two reviews at its meeting in January and May 2014.
48. The Professional Standards Manager undertook a third review of fitness to practise cases at the end of June 2014.
49. A total of 61 cases were reviewed as part of this exercise (29 formal complaints and 32 informal cases). Five cases were reviewed at both stages as they had progressed from informal to formal during the review period.
50. In broad terms, the reviewer looked for evidence that there was continuous activity on each case; that the parties were kept updated; that compliance with key performance indicators was being met; that risk was continually being assessed; that case management documentation was present on file and completed; and that relevant policies, such as the Notification of Fitness to Practise Investigations and Outcomes were being complied with.
51. In terms of qualitative feedback, the review found that cases were generally being processed to Committee stage within service standards. Delays tended to occur where cases were more complex or raised novel issues.
52. The review found that good support was offered to the complainant in most cases and that there was generally good communication with registrants. However, support for registrants who self-declare fitness to practice issues could be improved.

53. In relation to improvements since the last review, it was noted that better file notes of discussions/meetings outside of formal correspondence were now on file and that there was an improvement in the use of the risk forms and case chronology.
54. The review found that notification to interested parties about of the outcomes of committee decisions was generally good. However in some cases, notification to different parties was provided on different days, rather than at the same time.
55. In relation to the correspondence sent by GOsC, the review considered that the style guide was not always being followed, and the wording of letters to potential complainants could sometimes come across as unduly harsh/legalistic in tone. The review recommended more emphasis on encouragement and the avoidance of the use of technical terms where possible.
56. The review noted that whilst information was sought about employment arrangements and registration with other regulators, details about registration with other bodies was not always received. The review recommended the development of a template form that the registrant would be required to fill in, and which would readily highlight any missing information.
57. The findings from the review will be fed back to the team and considered in detail at the next team meeting.

#### *Investigating Committee – Executive recommendations*

58. At the IC all members day in May 2014, it was agreed that the use of executive recommendations would be piloted. From July 2014, the papers to be considered by the IC will now set out the Executive's views on whether or not there is a real prospect that the facts alleged will be proved, and whether or not there is a real prospect that the allegation will be well founded.

#### *Initial Stages Audit undertaken by the Professional Standards Authority*

59. In May 2014, the Professional Standards Authority (PSA) audited the eight cases that were closed by the Investigating Committee at the initial stages of the fitness to practise process during the 12 month period from 1 May 2013 to 30 April 2014.
60. The PSA carried out a previous audit of the initial stages of the GOsC's FTP process in August 2012. In the report of that audit (published in September 2012) the PSA found that *'the GOsC generally handles FTP cases well and has continued to operate a robust initial stages casework system'*.
61. However, the PSA recommended that the GOsC take steps to improve the letters it sends to complainants and registrants setting out the Investigating Committee's decisions, to ensure that clear and comprehensive reasons are provided and that all aspects of complaints are addressed.



62. The GOsC invited the PSA to carry out an audit of its initial stages FTP process in 2014, with the aim of using feedback from the PSA as part of our quality assurance of the effectiveness of new case management processes and guidance which were introduced during 2013.
63. Three of the eight cases included in the audit were investigated by the GOsC following the changes that had been implemented during 2013.
64. At the time of writing, the final PSA report was not yet available. However, key findings from the audit conveyed to the executive by the PSA were that:
  - a. the audit did not identify any decision to close cases at the initial stages of the fitness to practise process that posed a risk to patient safety and/or the maintenance of public confidence in the profession and the regulatory process
  - b. the PSA's overall conclusion was that the GOsC's initial stages fitness to practise process protects the public and maintains public confidence in the profession
  - c. the PSA had identified good practice in relation to the handling of personal and sensitive information in fitness to practise cases.
65. However, the audit identified a number of areas for improvement in relation to customer service issues and keeping the parties informed; recording of case work decisions and compliance with key performance indicators.
66. These recommendations and learning points will be carefully considered as part of on-going quality assurance work.
67. The GOsC welcomes the feedback from the PSA and considers audits of this kind to be an important part of the quality assurance process.
68. The full final report will be provided to members at the next Council Meeting.

#### *Equality monitoring*

69. Since the beginning of April 2014, the GOsC has begun sending Fitness to Practise Equality Monitoring Questionnaires to registrants when they are first notified that an allegation has been made against them.
70. Such monitoring is in line with the GOsC's duties under the Equality Act 2010 and will assist the GOsC to obtain more real time information, and to monitor the whole of the fitness to practise process to the sanctions stage.

## **Qualitative Research into complainant and registrant experience of the fitness to practise process**

71. In February 2009, the GOsC began a research project, with the intention of obtaining a better understanding of the views of complainants and registrants about their experience of fitness to practise proceedings.
72. At the conclusion of a complaint (at the informal stage; by the Investigating Committee; or after a hearing before the Professional Conduct Committee) the complainant and the registrant are provided with a questionnaire and asked to return the completed questionnaires directly to an independent research company, Moulton Hall Ltd.
73. Since the project began, a total of 70 completed questionnaires has been returned and analysed by Moulton Hall. The latest update report from Moulton Hall is included at Annex B to this paper.
74. Ten of the questionnaires relate to fitness to practise proceedings which took place in the calendar year 2013. Given the small number of responses, it is difficult to extrapolate any general themes. However, the report recommends the following areas for improvement:
  - a. being quicker in decision making pre Investigating Committee stage
  - b. speeding up the fitness to practise process generally
  - c. keeping registrants informed at each stage
  - d. improving the accommodation and facilities available at the hearing.
75. Analysis of the complainant and registrant experience is a valuable part of the quality assurance mechanisms available to the GOsC. Now that the project is well established, it is worthwhile assessing whether the data being provided is useful, or whether more meaningful data could be provided by other means.
76. The Executive is exploring other potential quality assurance mechanisms, including the use of on-line self completion surveys, and proposals will be brought to the Osteopathic Practice Committee for discussion in due course.

### **Feedback loops**

77. The Regulation Team produced a fitness to practise e-bulletin which was emailed to all registrants at the end of March. The bulletin highlighted the number of allegations received by the GOsC recently which involved a breach of sexual boundaries and set out the relevant guidance and practical considerations which registrants may find it helpful to keep in mind when seeing patients. The e-bulletin also includes items on protection of title and data protection.

78. In addition, the FTP Annual Report was published in the April/May edition of the Osteopath Magazine. The report provides information and statistics on the cases considered by the GOsC's fitness to practise committee during the period 1 April 2013 to 31 March 2014.

### **Training and development**

79. An all IC members training day was held on 21 May 2014. Feedback from the day was positive.
80. The emphasis on the day was very much geared towards decision making and the provision of reasons. Members of the IC were treated to seminars and workshops delivered by barristers from 39 Essex Street and 2 Hare Court. Members of the executive were also in attendance for these training sessions.
81. During the afternoon session, Members of the IC considered the potential for the development of 'threshold criteria' in relation to Unacceptable Professional Misconduct. Members were asked to break into groups to consider the sorts of case that they considered should not generally be referred to the Professional Conduct Committee and to discuss these in plenary session.
82. The work of the IC has been incorporated into the draft guidance on threshold criteria which is the subject of a separate paper before Council.
83. The IC also received a presentation from the Institute of Osteopathy about how their processes for representing registrants who are the subject of allegations.
84. During the reporting period, the Head of Regulation attended the annual Professional Regulation Seminars held by two firms of solicitors.
85. The entire regulation team will be shortly be attending a workshop on the drafting of allegations, provided by a set of barristers' chambers.

### **Working with other regulators and keeping abreast of good practice**

86. On 29 April 2014, the GOsC hosted the cross-regulator fitness to practise forum at Osteopathy House. Issues considered by the forum included consensual disposal of proceedings, threshold criteria, and the draft Law Commission Bill.
87. In the first half of 2014, the Regulation Manager and Regulation Assistant met with colleagues from four healthcare regulators (General Chiropractic Council, General Dental Council, General Optical Council and Health Care Professions Council) to learn about their processes for listing final fitness to practise hearings, and to explore what support they provide to their panels prior to (and during) hearings.
88. The purpose of the meetings was to identify ways in which we can improve our listing and pre-hearing preparation processes and the support we provide to the

PCC/HC. As a result of these meetings, we have begun developing new template briefing notes for panel chairs and templates for the various decisions that may need to be made at hearings. We are exploring options for improving the early identification of potential conflicts of interest. We also intend to introduce a new case management form to assist with the listing of cases. The form will require the parties to identify an estimated length of hearing, and to provide information about representatives' details, the number and type of witnesses to be called, and whether any special measures are required.

89. On 25 June 2014, the regulation assistant attended a seminar on best practice in adjudication held by the Medical Practitioner Tribunal Service. Issues considered by the group included lay panelist recruitment; the use of technology in hearing venues; and the potential for sharing hearing facilities.

**Recommendation:** to note the report.